

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

JIMMIE L. LAPSEY,

Plaintiff,

v.

CIVIL ACTION NO. 3:24-0204

CITY OF HUNTINGTON, WEST VIRGINIA,
a municipal corporation, and
KATHY BURKS,
individually and in her capacity as the Director of
Finance for the City of Huntington, West Virginia,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the Court is Defendants City of Huntington and Kathy Burks' Motion to Dismiss Plaintiff's Complaint (ECF No. 7) filed on June 24, 2024, and Plaintiff Jimmie L. Lapsey's First Motion to Amend Complaint filed on filed on July 9, 2024. ECF No. 10. Although ECF 10 was filed as a Motion to Amend, it appears Plaintiff is entitled to amend as a matter of right under Rule 15(a)(1)(B) of the Federal Rules of Civil Procedure as it was within 21 days of Defendants' Motion to Dismiss and no Answers have been filed.¹ While the motion seems

¹Rule 15(a)(1)(B) provides:

(1) *Amending as a Matter of Course.* A party may amend its pleading once as a matter of course no later than:

* * *

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a

to be unnecessary, the Court **GRANTS** the motion and **DIRECTS** the Clerk to file the Amended Complaint. Given that there now is a new operative Amended Complaint, the Court further **DENIES** the Motion to Dismiss **WITHOUT PREJUDICE**.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: July 17, 2024

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE

motion under Rule 12(b), (e), or (f), whichever is earlier.

Fed. R. Civ. P. 15(a)(1)(B).